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constitutions as well as in legislation. A comparison of the restrictions upon local and special legislation, at present existing in different States, of the doctrines which control the interpretation of the restrictive provisions of different constitutions, and of the practical working of those provisions may in the end lead to greater uniformity in the decisions of courts, and possibly in statutes and constitutions also, but such uniformity is necessarily of very slow growth.

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## STATE RAILROAD COMMISSIONERS.

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BY WILLIAM S. ELLIS, ESQ.

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WHEN, in 1885, the select committee of the United States Senate appointed to investigate the subject of the regulation of the transportation of freights and passengers between the several States sat to receive testimony, the statements of the various State Railroad Commissioners and the reports which they presented were listened to with close attention and regarded as of sufficient importance to be extensively incorporated within the Senate report. That document concludes with the recommendation for the establishment of what is now well known as the Interstate Commerce Commission. Before that time the supervision and regulation of railroads had been confined within State limits. The rapid development of railroads all over the country had naturally been attended, especially in those sections where the resident population found itself in little sympathy with the foreign ownership and management, by what were regarded as evils and abuses. These evils and abuses many of the States had for some years been making efforts to correct, and the widely varying results of their legislative experiments in this direction within their own restricted limits proved of inestimable value to those who had in view the assumption of national supervision.

"The history of these efforts," says the Senate report, "has never been written, and little has been known of them as a whole." One system of control has been by no means common to all the States. Each has dealt with the question with a greater or less degree of thoroughness, dependent upon the temper of the people, and in the manner which seemed best to suit the conditions there existing. To tell what those conditions have in each case been, and what causes and influences have operated to bring about the many instances of supervisory legislation, would be a difficult if not impossible task, and at best must be largely a subject for theory and speculation. The laws as they are found upon the statute books, however, the changes that have taken place in them since their original enactment, as well as their operation and effect—from one important point of view, at least—can readily be obtained from a large number of States—namely, those which have adopted the commission system. Not the least useful feature of that system is the publication of elaborate reports which show the working not merely of the Commissions themselves as agents of the State, but also of whatever additions to the general railroad law may be made from time to time.

It may be interesting, therefore, to observe the character and operations of these various commissions without dwelling upon the provisions of the States which depend upon legislative regulation of a more general kind. The following table shows the States having commissions, and the date at which each was first established, arranged in the order of their establishment :

New Hampshire . . . . .	1844
Connecticut . . . . .	1853
Vermont . . . . .	1855
Maine . . . . .	1858
Ohio . . . . .	1867
Massachusetts . . . . .	1869
Illinois . . . . .	1871
Rhode Island . . . . .	1872
Michigan . . . . .	1873
Wisconsin . . . . .	1874

Minnesota . . . . .	1874
Missouri . . . . .	1875
California . . . . .	1876
Virginia . . . . .	1876
Iowa . . . . .	1878
S. Carolina . . . . .	1878
Georgia . . . . .	1879
Kentucky . . . . .	1880
Alabama . . . . .	1881
New York . . . . .	1882
Kansas . . . . .	1883
Mississippi . . . . .	1884
Nebraska . . . . .	1885
Colorado . . . . .	1885
Dakota (as a Territory) . . . . .	1885
Oregon . . . . .	1889
Arizona <sup>1</sup> . . . . .	1891

It is thus seen that commissions existed at an early date, but they were of a kind so different from the State Railroad Commission, in the modern sense, that the reports of their doings, if any exist, are of little value as throwing light on the present development. They were created for some special or formal purpose, or were entrusted with duties of inspection only, without having the power to either suggest or recommend. Ohio was fortunate in having a commissioner<sup>2</sup> who held office for several years, and whose reports upon matters of practical importance attracted considerable attention. The prototype of the modern commission is undoubtedly that of Massachusetts (1869), and it will be noticed, in considering the features of each commission, that of all the others that of New York (1882) bears to it the closest resemblance.

To describe fully the provisions of all the acts creating these twenty-six commissions, and their subsequent changes and amendments, would be as unprofitable as it would be laborious, and yet it is impossible to properly understand and fairly estimate the value of the work which each has effected without a comparative view of the manner of their formation and the law under which they proceed. It is,

<sup>1</sup> Tennessee had a commission, created in 1883, abandoned in 1885.

<sup>2</sup> General George B. Wright.

therefore, necessary, before taking up the question of what has in each case been accomplished, to note first the institution of the various boards, and, secondly, the duties assigned them and the powers conferred upon them.

#### INSTITUTION OF THE COMMISSIONS.

In most instances the boards are composed of three commissioners,<sup>1</sup> but several States have only one.<sup>2</sup> The Nebraska board has five members, but as these are made up of the governor, secretary of State and three other State officers, they have not been included in the list of special commissions. In Arizona, the most recently created commission has four.

The manner in which the appointment of commissions is provided for also varies. In Massachusetts they are appointed by the governor with the consent of the Senate.<sup>3</sup> In Virginia, South Carolina and Mississippi they are elected by the legislature, while in yet other States they are elected by the people.<sup>4</sup> The most noticeable example of the last-mentioned method is that of Iowa, where originally the three commissioners were appointed by the governor. In 1888 the law was changed, and now the one vacancy occurring each year by limitation is filled by popular election.

The term of office is from two to six years.<sup>5</sup>

<sup>1</sup> New Hampshire, Massachusetts, Maine, Connecticut, Vermont, New York, (New Jersey) Illinois, Minnesota, Kansas, Kentucky, Texas, Georgia, Alabama, Ohio, Iowa, Arkansas, Missouri, South Carolina, California.

<sup>2</sup> Virginia, Rhode Island, Michigan, Colorado, Wisconsin, Oregon.

<sup>3</sup> So also in New Hampshire, Maine, Vermont, Connecticut, New York, Illinois, Minnesota, Kansas, Kentucky, Tennessee, Texas, Georgia, Alabama, Rhode Island, Ohio, Michigan, Colorado.

<sup>4</sup> Wisconsin, Montana, Iowa.

<sup>5</sup> Six years in Missouri, Alabama, Georgia, South Carolina.

Five years in New York.

Four years in Connecticut.

Three years in Massachusetts, New Hampshire, Iowa, Kansas, Ohio, Tennessee, Mississippi, Maine.

Two years in Kentucky.

Most of the Acts make provision for the filling of vacancies which may occur during a term through appointment by the governor, with the approval, in some cases, of the senate (Alabama), or legislature, if in session (South Carolina), or the council (Kansas). This question is an important one when taken in connection with that of eligibility for the office of commissioner.

The amount of salary paid the members of each board depends in most cases, as might be expected, on the time they are expected to devote to their duties, and the general importance of those duties. New York heads the list with \$8000 a year paid to each commissioner. In Massachusetts the chairman receives \$4000 and the other members \$3500 each. In Colorado the single commissioner is paid \$3600, while in Ohio and Virginia he receives \$3000.<sup>1</sup>

The appointment of a secretary or clerk is also in every instance provided for,<sup>2</sup> and there is generally to be found an ample allowance for the employment of a marshal (whose duties usually consist in the serving of notices, etc.), engineers, accountants and other experts. A further sum of money is set aside for the purchase of necessary books, maps and statistics, and all travelling expenses of the commissioners themselves, as well as of any assistants who accompany them while in the prosecution of their work, are, of course, also either paid them by reimbursement, or passes are issued by the railroad companies countersigned by the secretary of State.

Either the total amount of expenses which are to be incurred annually for the support of the commission is explicitly stated (as in New York, for instance, where the sum set aside is limited to \$50,000) or there is merely the requirement that it shall be reasonable.

The question of who is to bear these expenses is an important one, and one that has several times been passed

<sup>1</sup> In California each of the three receives \$4000; in Mississippi and Georgia, \$2000; in Iowa, \$3000; in Maine, \$5.00 per diem; in Vermont, \$500 per annum.

<sup>2</sup> In New York he receives \$3000 per annum; in Massachusetts, \$2000.

upon by the courts. In some States it is a matter of appropriation, in others there is the special provision that upon the railroads themselves shall fall the burden. The New York act thus provides: "Such expenses shall be borne by the several corporations owning or operating railroads according to their means, to be apportioned by the Comptroller and State Assessors, who . . . shall assess upon each of said corporations its just proportion of said expenses, one-half in proportion to its net income for the year next preceding that in which the assessment is made, and one-half in proportion to the length of main track or tracks on road, and such assessment shall be collected in the manner provided by law for the collection of taxes upon corporations." <sup>1</sup>

In Massachusetts the words of the act are the same, with the exceptions that the street railways (which in that State are also within the jurisdiction of the Commission) are also assessed, and the assessment is "in proportion to the gross earnings by the transportation of persons and property." <sup>2</sup>

In Connecticut, New Hampshire, Maine and Alabama also the railroads are assessed.

The location of the headquarters of the board is invariably the State capital, and in several of the acts it is particularly stated that regular meetings may be held in branch offices from time to time. In New York City and Buffalo, for instance, such offices are established by the statute of that State.

Although a quorum is prescribed for the transaction of general business and the rendering of decisions, it is permissible for one commissioner to conduct, with the consent of the board, an examination or investigation, the proceedings under him not being final until approved and confirmed by the board.

It remains to notice who is eligible for the office of commissioner and as the success of any commission, especially

<sup>1</sup> N. Y. Rev. Sts. (1890), p. 2504.

<sup>2</sup> Mass. Pub. Sts. (1882), c. 112, § 12.

one which has to deal with corporations of such public importance as railroads, depends, no matter how restricted the powers conferred by the act creating it may be, almost entirely upon its *personnel*, it is obvious that the rules laid down for the selection of its members are necessarily important.

To begin with, there is an almost universal requirement that no one holding stock (and in some cases bonds) of, or having any interest in, or being an employé of any railroad, shall be a commissioner,<sup>1</sup> and in some of the acts it is expressly stated that "if any person elected to the office shall become an officer, stockholder, or interested in any railroad, he shall immediately cease to be commissioner."<sup>2</sup> "Not more than two of the three shall belong to the same political party."<sup>3</sup>

In New York there is the prohibition that the commissioners shall not be engaged in any other business. This seems an unnecessary express provision, as it would be quite impossible for the members of that board to devote even a small portion of their time to outside duties. When the New York commission was created it was under the requirement that "one of the commissioners should be of the party casting the greatest number of votes at the last general election, another of the party casting the second number," and the third to be nominated by certain organizations<sup>4</sup> which had been instrumental in bringing about the passage of the act. These requisites for eligibility, however, do not seem to have applied to subsequent appointees.

<sup>1</sup> New York, New Hampshire, Massachusetts, Vermont, Ohio, Illinois, Michigan, Wisconsin, Idaho, Minnesota, Kansas, Virginia, Kentucky, Missouri, Texas, Oregon, Colorado, South Carolina, Georgia, Alabama, Mississippi.

<sup>2</sup> New Hampshire, Massachusetts, Illinois, Michigan, Iowa, Kentucky, Mississippi, Texas, Oregon, South Carolina.

<sup>3</sup> New Hampshire, Minnesota, Kansas, Oregon, etc.

<sup>4</sup> The Chamber of Commerce of New York, the New York Board of Trade and Transportation, and the National Anti-Monopoly League of New York.



In Maine, "one of the commissioners shall be learned in the law, and be appointed chairman, one shall be a civil engineer and be experienced in the construction, and the third shall be experienced in the management and operation of railroads." This State, it was noticed, is not included among those which deny the office of commissioner to those who have been connected with any railroad.

Connecticut requires one of her commissioners to be "a lawyer of good standing and at least ten years' practice," and another to be a civil engineer of like experience; the third must be "a good practical business man."

In several instances it is necessary that the commissioners come from certain districts of the State. Kentucky, for instance, selects one from the eastern, one from the middle, and one from the western district.

There is a common express prohibition against recommendation by the board of any agent, attorney or officer for appointment by a railroad, and its members are forbidden, on the other hand, to receive any position or gratuity from the roads. In New York even the passes used by the commissioners must be countersigned by the Secretary of State and sent them by him.

"Before entering upon their duties the commissioners must make, subscribe and file in the office of the Secretary of State an oath of office."<sup>1</sup> This is required in every State, and in some the commissioners are compelled to "enter into bonds (for varying amounts) with the people of the State for the faithful performance of their duties."

What those duties are, what special powers are entrusted to the different commissions and to what extent their decisions are binding upon the corporations, remain to be considered in a second paper.

[TO BE CONCLUDED.]

<sup>1</sup> New York, etc. (In Massachusetts "they must be sworn").